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 2 ELLIOTT D. OLSON (Bar No. 41501)
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 4 FREDERIC F. GRANNIS (Bar No. 185119)
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 801 South Figueroa Street, 19th Floor
 Los Angeles, California 90071-3536
 Telephone: (213) 426-6900
 Facsimile: (213) 426-6921

7 Attorneys for Defendant
 8 CATERPILLAR INC.

E-FILING

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

KENNETH ORNDORF,

Plaintiff,

v.

15 CATERPILLAR INC., a Delaware
 16 Corporation and DOES 1 through
 50, inclusive,

Defendant.

C08 01276

(State Court Case Number: M87442)

CATERPILLAR INC.'S NOTICE OF
 REMOVAL OF ACTION
 PURSUANT TO 28 U.S.C. §§ 1332,
 1441(b), AND 1446(b)

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant Caterpillar Inc.

("Caterpillar") hereby removes to this Court the state court action described
 below.

JURISDICTION

1. This action is a civil action of which this Court has original
 jurisdiction pursuant to 28 U.S.C. § 1332, and is one which may be removed to
 this Court pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1446(b). It is a
 civil action wherein the matter in controversy exceeds the sum of \$75,000,
 exclusive of interest and costs, and is between citizens of different states.

1 2. Plaintiff's Complaint alleges that on or about November 3, 2005, he
2 was injured while working around a Caterpillar model TH460B Telehandler.
3 Plaintiff claims that Caterpillar designed, manufactured, and sold the subject
4 Telehandler. The Complaint alleges causes of action for strict products liability
5 and negligence. The named defendants in plaintiff's Complaint are Caterpillar
6 Inc. and Does 1 through 50.

7 3. Caterpillar is informed and believes that plaintiff is and, at all
8 relevant times herein, was a citizen of the State of California.

9 4. Defendant Caterpillar is and, at the time of the filing of this action,
10 was incorporated under the laws of the State of Delaware, with its principal place
11 of business in the state of Illinois. It is not and, at the time this action was filed,
12 was not a citizen of the State of California.

13 5. Caterpillar manufactures heavy equipment for use in the earthmoving,
14 construction, mining, and forestry industries and diesel engines. Its manufacturing
15 operations are wide spread and it has factories and facilities in several of the
16 United States and in several different countries around the world.

17 6. However, Caterpillar's corporate headquarters are located in Peoria,
18 Illinois. Its annual shareholder meetings in the past six years have occurred in
19 Chicago, Illinois, and most meetings by its board of directors have taken place in
20 Illinois. Over the past six years, there have been forty-six board meetings. Of
21 those forty-six meetings, only one has been held in California. Caterpillar's
22 Chairman and Chief Executive Officer and all but one of its Group Presidents are
23 based in Peoria, Illinois. Most important executive and administrative functions
24 are performed in Illinois.

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1 7. Caterpillar operates a number of design, manufacturing, and testing
2 facilities in the State of Illinois, including six major manufacturing facilities and
3 other smaller facilities. It employs approximately 26,000 employees in the State
4 of Illinois. While it operates facilities in many places around the world, it has a
5 more substantial presence in Illinois than it does in any other state or country.

6 8. Diversity of citizenship may be established by pleading negative
7 statements showing that the defendant is not a citizen of the state where the
8 plaintiff's citizenship lies. *See John Birch Society v. National Broadcasting Co.*,
9 377 F.2d 194, 197-199 (2d Cir. 1967). Caterpillar is not a citizen of the State of
10 California. Caterpillar's activities in the State of California are very limited and
11 insignificant when compared to its activities outside of California and, in
12 particular, its activities in the state of Illinois. Caterpillar has only a few offices in
13 California and employs fewer than 300 people in the state. It does not employ any
14 executives in California and performs no important executive or administrative
15 functions in the state. Caterpillar does not manufacture any products in the state
16 of California.¹

17 9. Pursuant to 28 U.S.C. § 1446(b), "[t]he notice of removal of a civil
18 action or proceeding shall be filed within thirty days after the receipt by the
19 defendant, through service or otherwise, of a copy of the initial pleading setting
20 forth the claim for relief upon which such action or proceeding is based"

21 10. Plaintiffs' Complaint was received by Caterpillar on February 4,
22 2008. Caterpillar is filing this Notice of Removal on March 5, 2008. Thus, this

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25 ¹ Caterpillar's subsidiary, Solar Turbines Inc., has a manufacturing facility in San Diego,
26 California. However, Solar Turbines Inc. is a separate corporation, whose activities in California
27 may not be attributed to Caterpillar. *Schwartz v. Electronic Data Systems, Inc.*, 913 F.2d 279,
28 283; *see also Taber Partners v. Merit Builders*, 987 F.2d 57, 61 (1st Cir. 1993). In a suit against
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1 Notice of Removal is timely because it is brought within thirty (30) days of the
2 receipt by Caterpillar of Plaintiff's Complaint.

3 11. Does 1 through 50 should also be disregarded for purposes of
4 determining removal jurisdiction. Under 28 U.S.C. § 1441(a), "[f]or purposes of
5 removal ...the citizenship of defendants sued under fictitious names shall be
6 disregarded."

7 12. There are no further defendants in this action at this time.

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9 exceeds \$75,000. Plaintiff's Complaint seeks damages for, inter alia, personal
10 injuries, pain, suffering, lost earnings and earnings capacity, disability, special
11 damages, interest, and costs. (Exhibit "A"). Specifically, the Complaint alleges
12 that plaintiff sustained a crushing injury to his left index finger. (Exhibit "A," ¶
13 16). It is further alleged that plaintiff sustained injury to his "health, strength, and
14 activity, . . . [and] body," and "shock and injury to his nervous system and person,
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8 17. Caterpillar first received a copy of said Complaint on February 4,
9 2008, when a copy was personally served on February 4, 2008. A copy of the
10 summons and service return is attached hereto as composite Exhibit “B.”
11 Caterpillar filed an Answer to the Complaint in the Superior Court of California,
12 County of Monterey, on March 3, 2008, a copy of which is attached hereto as
13 Exhibit “D.”

14 18. Caterpillar removes the state court action to the San Jose Division of
15 the United States District Court for the Northern District of California because the
16 state court action was filed in Monterey County.

17 19. Caterpillar attaches copies of all states court pleadings, process, and
18 orders, which have been served as follows:

- 19 (a) *Complaint for Injuries and Damages* (Exhibit “A”);
20 (b) *Summons* on underlying Complaint (Exhibit “B”);
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23 (d) *Defendant Caterpillar Inc.'s Answer to Plaintiff's Complaint*
24 *for Injuries and Damages* (Exhibit “D”).

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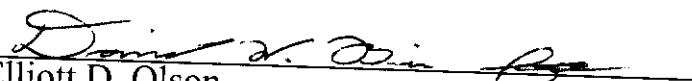
28 ///

1 20. Caterpillar reserves the right to amend or supplement this Notice of
2 Removal should it become necessary.
3

4 DATED: March 4, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

6 By:

7 
8 Elliott D. Olson
9 Frederic F. Grannis
10 Jeffrey H. Ikejiri
11 Attorneys for Defendant
12 CATERPILLAR INC.
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JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

KENNETH ORNDORF

DEFENDANTS

CATERPILLAR INC., a Delaware Corporation and DOES 1 through 50, inclusive.

(b) County of Residence of First Listed Plaintiff, California
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert D. Ponce (State Bar 108069) T/ (831) 649-0512
Law Offices of Robert D. Ponce
787 Munras Avenue, Suite 200
Monterey, California 93940

Jeffrey H. Ikejiri (State Bar 245256) T/ (213) 426-6900
Seligman, Deteret, Moran & Arnold
800 S. Figueroa Street, 9th Floor
Los Angeles, California 90017

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 365 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. §§1332, 1441, and 1446.

Brief description of cause:

Plaintiff's complaint alleges causes of action for strict product's liability and negligence.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ N/A

CHECK YES only if demanded in complaint:

VIII. RELATED CASE(S) IF ANY

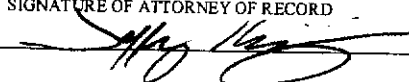
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". None

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/3/08



CIVIL COVER SHEET
FORM JS 44

I. (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

Elliott D. Olson (State Bar No. 41501)
Frederic F. Grannis (State Bar No. 185119)
Sedgwick, Deter, Moran & Arnold
801 South Figueroa Street
19th Floor
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E-FILING

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SAN JOSE DIVISION

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(State Court Case Number: M87442)

CATERPILLAR INC.'S NOTICE OF
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PURSUANT TO 28 U.S.C. §§ 1332,
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FILED
2008 MAR -5 P 12:12
RICHARD D. WILKINS
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
3

PVT

C 08 01276

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4 DATED: March 4, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

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6 By:


Elliott D. Olson
Frederic F. Grannis
Jeffrey H. Ikejiri
Attorneys for Defendant
CATERPILLAR INC.

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KENNETH ORNDORF

DEFENDANTS

CATERPILLAR INC., a Delaware Corporation and DOES 1 through 50, inclusive.

(b) County of Residence of First Listed Plaintiff (Monterey, California)
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert D. Ponce (State Bar 108069) T/ (831) 649-0512
Law Offices of Robert D. Ponce
787 Munras Avenue, Suite 200
Monterey, California 93940

Attorneys (If Known)

Jeffrey H. Ikejiri (State Bar 245256) T/ (213) 426-6900
Seigrist, Teter, Moran & Arnold
800 S. Figueroa Street, 9th Floor
Los Angeles, California 90017

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury	<input type="checkbox"/> 616 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions	
					<input type="checkbox"/> 891 Agricultural Acts	
					<input type="checkbox"/> 892 Economic Stabilization Act	
					<input type="checkbox"/> 893 Environmental Matters	
					<input type="checkbox"/> 894 Energy Allocation Act	
					<input type="checkbox"/> 895 Freedom of Information Act	
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
					<input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§1332, 1441, and 1446.

Brief description of cause:

Plaintiff's complaint alleges causes of action for strict product's liability and negligence.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ N/A

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". None

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE

3/3/08

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

CIVIL COVER SHEET
FORM JS 44

I. (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

Elliott D. Olson (State Bar No. 41501)
Frederic F. Grannis (State Bar No. 185119)
Sedgwick, Deter, Moran & Arnold
801 South Figueroa Street
19th Floor
Los Angeles, California 90017

T/ (213) 426-6900
F/ (213) 426-6921

FILED

NOV 01 2007

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
C. WILLIAMS DEPUTY

1 Robert D. Ponce (State Bar: 108069)
2 LAW OFFICES OF ROBERT D. PONCE
3 787 Munras Avenue, Suite 200
4 Monterey, CA 93940
5 (831) 649-0515

6 Attorney for Plaintiff, KENNETH ORNDORF

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF MONTEREY

10 UNLIMITED JURISDICTION

11 KENNETH ORNDORF,

12 Plaintiff,

13 vs.

14 CATERPILLAR, INC., a Delaware
15 Corporation and DOES 1 through 50,
16 inclusive;

17 Defendants.

CASE NO.:

M 87442

COMPLAINT FOR INJURIES AND
DAMAGES

[Strict Liability in Tort; Product
Liability: Design Defect]

Claim Over \$25,000.00

18 Plaintiff, KENNETH ORNDORF, hereby alleges:

19 FIRST CAUSE OF ACTION

20 (Strict Liability in Tort)

21 1. At all times herein mentioned, plaintiff, KENNETH ORNDORF was and is a
22 resident of the County of Monterey, State of California.

23 2. Plaintiff is informed and believes, and upon such information and belief, alleges
24 that at all times herein mentioned defendant CATERPILLAR, INC. was and is a Delaware
25 corporation licensed to conduct business in the State of California. At all times herein
26 mentioned, defendant CATERPILLAR, INC. was conducting business in the County of
27 Monterey, State of California.

28 3. This action is filed in the County of Monterey because the acts complained of

1 herein occurred within the County of Monterey, California.

2 4. The true names or capacities, whether individual, corporate, associate or
3 otherwise, of defendants DOES 1 through 50, inclusive, are not now known to or ascertainable
4 by plaintiff, and plaintiff prays leave of Court to amend this complaint to insert their true names
5 and capacities when the same are ascertained. Plaintiff is informed and believes, and on such
6 information and belief alleges that each of the defendants designated herein was negligently
7 responsible in some manner for the events and happenings herein referred to, and negligently
8 caused injury and damages proximately thereby to plaintiff, as herein alleged.

9 5. At all times herein mentioned, each defendant was the agent, servant and
10 employee of each of the remaining defendants, and was acting in the scope of his or her
11 employment as such agent, servant and employee.

12 6. The incident complained of herein occurred on or about November 3, 2005 within
13 the County of Monterey, at plaintiff's place of employment, Estancia Winery located at or near
14 the town of Soledad, California.

15 7. Defendant, CATERPILLAR, INC. is engaged in the development, design,
16 manufacture, sale and service of a forklift bearing Model No. TH460B referred to by
17 CATERPILLAR, INC. as a "Telehandler" model.

18 8. While working within the course and scope of his employment, plaintiff
19 ORNDORF and other co-workers were assigned to move a large tank, normally used to house
20 wine. ORNDORF and said co-workers intended to use a Caterpillar TH460B Telehandler
21 forklift to move the tank. The forklift's forks were spread 3 ½ feet apart. Plaintiff and his co-
22 workers wanted to have the forks spread 5 feet apart before lifting the tank with the forklift.

23 9. In order to spread the forks outward, the forks needed to be lifted and accessed.
24 The TH460B model was designed such that the forks were housed within a carriage unit. The
25 carriage unit needed to be lifted in order to have the forks spread. When the unit was lifted, the
26 forks hung in such a manner that they could be spread apart. The carriage unit was then lifted.
27 As it was in its upright position, it fell, crushing plaintiff's left index finger.

28 10. The described carriage unit, which housed the forks, was designed to hang

1 on a retaining pin, hydraulically controlled. The pin was and is designed to fit within a hole,
2 located within a metal plate. The plate is part of a frame of the described carriage unit which
3 contains the forks. The carriage unit assembly is designed such that the pin can be pushed
4 inward. If the pin is pushed inward, it is no longer anchored to the metal plate. The unit can
5 become loose and fall, in the manner that it fell at the time of plaintiff's accident. The pin is
6 required to be moved in an outward manner and positioned within the hole of the aforementioned
7 metal plate. The positioning and location of the pin was controlled by a switch on the driver's
8 panel board. There was no indication on the panel board or the switch as to whether the pin was
9 moved inward, thus not fitting within the hole, or was in place within the hole. At the time of the
10 accident, the retaining pin was not positioned within the hole and, thus, the carriage unit which
11 housed the forks was loose.

12 11. Defendant CATERPILLAR, INC. and DOES 1 through 10 intended for said
13 Telehandler, which was manufactured, designed, assembled and serviced by CATERPILLAR,
14 INC. to be used by plaintiff and his co-workers in the manner so described herein.

15 12. At all times herein mentioned, defendant CATERPILLAR, INC. and DOES 1
16 through 10 knew and intended that its Telehandler would be used by plaintiff and his co-workers,
17 in the manner as described herein, without inspection for defects.

18 13. Prior to November 3, 2005, Estancia Winery, the employer of plaintiff KEN
19 ORNDORF, purchased, leased or otherwise obtained said TH460B Telehandler for use at its
20 Soledad, California winery, the location where plaintiff KENNETH ORNDORF worked.

21 14. The Telehandler was, at the time plaintiff used it on November 3, 2005, defective
22 and unsafe for its intended purpose. Said Telehandler forklift possessed forks which were
23 intended to moved in such a manner as to have the forks spread apart or moved together. In
24 order to move said forks, the carriage unit containing said forks was required to be lifted. Said
25 carriage unit was anchored on a retaining pin. The retaining pin was required to be positioned
26 into a hole located within a metal plate. The retaining pin was easily moved inward from the
27 hole. If the retaining pin was moved inward, the carriage unit containing said forks becomes
28 loose and prone to falling. At the time of the accident alleged herein, said assembly fell and

1 plaintiff's hand as described herein.

2 15. On or about November 3, 2005, plaintiff was using the CATERPILLAR, INC.
3 Telehandler at said Estancia Winery for the purposes of lifting a wine tank. Specifically, plaintiff
4 and co-workers intended to spread the forks of said forklift. CATERPILLAR, INC. and DOES 1
5 through 5 designed and manufactured said TH460B Telehandler forklift in such a manner that it
6 did not contain a warning, or alert plaintiff or his co-workers of the fact that the retaining pin was
7 not anchored within said hole. Because of said failure to warn, the assembly containing said
8 forks fell and struck plaintiff's hand, causing injury and damages as alleged herein. Further, said
9 Telehandler forklift was not equipped with a warning device, either a light or message alerting
10 the operator that the retaining pin was not in place or a posted-warning informing users to look
11 for the retaining pin to be in place before lifting said forklift assembly containing said forks.
12 Said warning or device alerting the operator to the existence of the non-placement of the
13 retaining pin would have alerted plaintiff and his co-workers to not lift said assembly device and
14 move the forks in the manner so moved.

15 16. As a proximate result of the defect, the Telehandler's assembly containing said
16 forks struck plaintiff's left hand causing injuries to plaintiff. Plaintiff was injured in his health,
17 strength and activity, sustaining injury to his body and shock and injury to his nervous system
18 and person, all of which injuries have caused, and continue to cause plaintiff great mental,
19 physical and nervous pain and suffering, all to his general damage in an amount to be proven at
20 trial.

21 17. As a further proximate result of the defect, plaintiff was required to receive
22 medical care and treatment, and plaintiff did incur medical and incidental expenses and will in
23 the future be compelled to incur additional obligations therefore, in an amount unknown to
24 plaintiff at the present time, and will be proven at trial.

25 18. As a further proximate result of the defect, said Telehandler's assembly
26 containing said forks struck plaintiff's left hand, causing injuries as alleged herein. Because of
27 plaintiff's injuries, plaintiff has been, and will continue to be, prevented from attending to his
28 occupation. The total amount of earnings, which has been lost or will be lost to plaintiff is in an

1 amount unknown at this time and will be proven at trial.

2 SECOND CAUSE OF ACTION

3 (Product Liability: Design Defect)

4 19. Plaintiff refers to paragraphs 1 through 18 of this complaint and realleges each
5 and every allegation as though fully set forth herein.

6 20. Because defendants CATERPILLAR, INC. and DOES 1 through 10, and each of
7 them, were engaged in the business of designing, manufacturing, assembling and servicing said
8 Telehandler to the general public, defendants owed a duty to the general public, and to plaintiff in
9 particular, to use reasonable care to see that the Telehandler was free from defects and safe to use
10 by plaintiff.

11 21. Defendants, and each of them, failed and neglected to use reasonable care in the
12 design, manufacture, assembly and installation of said Telehandler. As a proximate result of
13 their negligence and carelessness, said forklift assembly carrying said forks fell upon plaintiff's
14 left hand when plaintiff used it as intended, suffering the injuries and damages alleged herein.

15 22. As a direct and proximate result of the negligence of defendants, and each of
16 them, plaintiff has sustained damages as alleged herein.

17 WHEREFORE, plaintiff prays judgment against defendants, and each of them, as
18 follows:

19 1. For general monetary damages on account of plaintiff's injuries, pain, suffering,
20 and disability, according to proof;

21 2. For all special damages, according to proof;

22 3. For interest at the rate of ten percent (10%) per annum from the date of filing of
23 the Complaint until judgment is paid;

24 4. For costs of suit incurred herein; and

25 5. For such other and further relief as the court may deem just and proper.

26 DATED: November 1, 2007

LAW OFFICES OF ROBERT D. PONCE

27 By

Robert D. Ponce
Attorney for Plaintiff

28

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
CATERPILLAR, INC., a Delaware
Corporation and DOES 1 through 50,
inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
KENNETH ORNDORF

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**FILED**

NOV 01 2007

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
C. WILLIAMS DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Monterey Branch

1200 Aguajito Road, Monterey, CA 93940

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ROBERT D. PONCE (Bar # 108069)

LAW OFFICES OF ROBERT D. PONCE

787 Munras Avenue, Suite 200, Monterey, CA 93940

DATE:

NOV 01 2007

CONNIE MAZZEI

Clerk, by
(Secretario)

C. WILLIAMS

Deputy
(Adjunto)

CASE NUMBER:
(Número del Caso):

M 87442

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under:

- | | |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

4. ☒ by personal delivery on (date):

2-8-08

Caterpillar, Inc., a Delaware Corporation

EXHIBIT B

300012

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

02/05/2008

CT Log Number 513053367



TO: James B Buda, General Counsel
Caterpillar Inc.
100 NE Adams Street
Peoria, IL 61629-7310

RE: Process Served in California

FOR: Caterpillar Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Kenneth Orndorf, Plff. vs. Caterpillar, Inc., etc., et al., Dfs.
DOCUMENT(S) SERVED: Summons, Complaint, Case Management Notice, Attachment(s), Request/Conference, Certificate of Counsel, Cover Sheet, Attachment(s) Stipulation Form and Proposed Order
COURT/AGENCY: Monterey County, Monterey, Superior Court, CA
Case # M87442
NATURE OF ACTION: Personal Injury - On November 3, 2005 when carriage unit fell on plaintiff's finger
ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE: By Process Server on 02/04/2008 at 14:30
APPEARANCE OR ANSWER DUE: Within 30 days after service - file written response // 4/3/2008 at 9:00 a.m. - Case Management Conference
ATTORNEY(S) / SENDER(S): Robert D. Ponce
Law Offices of Robert D. Ponce
787 Munras Ave
Ste 200
Monterey, CA 93940
831-649-0515
ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Standard Overnight, 790932502379
Email Notification, Litigation Support lit.support@cat.com
SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

Page 1 of 1 / JK

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

000013

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY		Reserved for Clerk's File Stamp
Orndorf, Kenneth, Plaintiff/Petitioner	vs.	FILED NOV 01 2007 CONNIE MAZZEI CLERK OF THE SUPERIOR COURT DEPUTY C. WILLIAMS
Caterpillar, Inc, Defendant/Respondent		
CASE MANAGEMENT NOTICE		Case No. M87442

Case Management Conference Date: April 3, 2008 at 9:00 a.m.

1. NOTICE is hereby given that a CASE MANAGEMENT STATEMENT shall be filed with the Court and served on all parties NO LATER than: 30 days before the above date of the Initial CASE MANAGEMENT CONFERENCE.
2. No party may stipulate to extend any of the dates set above.
3. At the CASE MANAGEMENT CONFERENCE, it is expected that trial counsel for each party and each self-represented party shall attend and be fully prepared to participate effectively in the conference.
4. On receipt of the CASE MANAGEMENT STATEMENT and at or before the CASE MANAGEMENT CONFERENCE the Court may make the following orders:
 - a. refer the matter to arbitration, the court-directed mediation program, or other alternative dispute resolution procedures;
 - b. identify the case as one which may be protracted and in need of special attention;
 - c. assign the case to a particular judge for all purposes;
 - d. assign a mandatory settlement conference and trial date;
 - e. make orders establishing discovery schedules and cut-offs, including expert witness disclosure and discovery;
 - f. make appropriate Trial Management Orders; and/or
 - g. make any other orders to achieve the interests of justice and the timely disposition of the case, including the setting of additional Status Conferences.
5. It is the policy of this Court that all complaints and cross-complaints be filed and served, all challenges to the pleadings be heard, and the matter be at-issue no later than 180 days from the filing of the complaint. It is the policy of this Court that all civil matters be resolved in no more than 12 to 24 months of the filing of the complaint.
6. Failure to file the CASE MANAGEMENT STATEMENT, attend the CASE MANAGEMENT CONFERENCE and participate effectively, or comply with any CASE AND TRIAL MANAGEMENT RULES may result in sanction.
7. It is the responsibility of the parties and/or their attorneys to be familiar with the Monterey County Case and Trial Management Policies and Rules and to comply therewith.

BY ORDER OF THE PRESIDING JUDGE

Date: November 1, 2007

By: C. WILLIAMS
Deputy Clerk

Alternative Dispute Resolution

OPTIONS FOR RESOLVING YOUR DISPUTE

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach agreement.

Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time:** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
- **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
- **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
- **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- **Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the ADR Options?

The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

Mediation

In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

- **Cases for Which Mediation May Not Be Appropriate:** Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision in binding arbitration. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate: If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate: Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate: Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conference

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):		
TELEPHONE NO.:	FAX NO. (Optional)	
EMAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY		
MAILING ADDRESS: 1200 Agujito Road		
CITY AND ZIP CODE: Monterey, CA 93940		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT:		
Request to Vacate or Continue Initial Case Management Conference and Order		Case Number:
A CASE MANAGEMENT CONFERENCE is scheduled as follows:		
Date:	Time:	Dept.: Div.: Room:

- ▶ IF APPLICABLE, THIS REQUEST AND ORDER MUST BE FILED CONCURRENTLY WITH THE CASE MANAGEMENT STATEMENTS, WHICH ARE DUE NO LATER THAN 30 DAYS BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE.
- ▶ PER LOCAL RULE 6.08(g), IF THE PARTIES DO NOT RECEIVE A SIGNED COPY OF THE ORDER GRANTING THE REQUEST, THEY MUST ATTEND THE CASE MANAGEMENT CONFERENCE.

Counsel and the parties certify that the Initial Case Management Conference should be vacated or continued for the following reasons [circle one]:

1. All parties have appeared and agree to engage in the below ADR program [check one]:

- ☐ Court-Directed mediation
 ☐ Private mediation
☐ Nonbinding judicial arbitration
 ☐ Private arbitration
☐ Other:

THE

PARTIES AGREE TO COMPLETE THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM WITHIN 90 DAYS OF THE FILING OF THIS FORM. Further Case Management Conference is requested

2. Case is concluded and judgment or dismissal has been entered as to all parties.
3. Case has settled; dismissal shall be filed on or before _____.
4. Case is at-issue and all parties agree that matter may be set for trial without the necessity of a Case Management Conference.
5. All defendants have not been served and the plaintiff has been granted an extension by the court until _____ to complete service on all defendants. Further Case Management Conference is requested.
6. A defendant has filed bankruptcy; case should be stayed pending the completion of bankruptcy. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any action by the debtor or the Bankruptcy Court that would act as a lifting of said stay.
7. Case has been removed to Federal Court. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any remand back to Superior Court or of any judgment or dismissal filed in the Federal Court.

Request to Vacate or Continue Initial Case Management Conference and Order	Case Number:
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8. Plaintiff has obtained a default as to all defendants and will perfect the default by entry of court or clerk judgment in timely manner. Further Case Management Conference is requested.
9. All defendants have appeared and discovery is proceeding in a timely manner. For reasons set forth in the parties' Case Management Statements, the case should be designated (circle one) Category I, Category II or Category III. Parties anticipate case will be ready to set for trial as of _____. Further Case Management Conference is requested.
10. Other:

 _____ Further Case Management Conference is requested.

 Counsel for Plaintiff (print name)

 Counsel for Defendant (print name)

 Signature

 Signature

 Counsel for Plaintiff (print name)

 Counsel for Defendant (print name)

 Signature

 Signature

For additional parties, attach additional signature pages as needed.

<p>Good Cause appearing, IT IS SO ORDERED that the Case Management Conference set for _____ is vacated.</p> <p><input type="checkbox"/> Supplemental Case Management Statements shall be filed as set forth in 6 or 7 above.</p> <p><input type="checkbox"/> Receipt of Dismissal is set for _____.</p> <p><input type="checkbox"/> Further Case Management Conference is set for _____. Parties shall file Case Management Statements prior to said hearing per Local Rule 6.08(e).</p> <p>PLAINTIFF MUST SERVE A COPY OF THIS ORDER ON ALL PARTIES.</p> <p>Dated: _____</p> <p style="text-align: right;">_____ <i>Judge of the Superior Court</i></p>
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MAR-03-2008 15:17

SAYLER LEGAL SUC

831 384 4031 P.02

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 11 Facsimile: (213) 426-6921

12 Attorneys for Defendant
 13 CATERPILLAR INC.

FILED

MAR 03 2008

CONNIE MAZZEI
 CLERK OF THE SUPERIOR COURT
~~C. WILLIAMS DEPUTY~~

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF MONTEREY

11 KENNETH ORNDORF,

CASE NO. M87442

12 Plaintiff,

DEFENDANT CATERPILLAR INC.'S
 ANSWER TO COMPLAINT

13 v.

14 CATERPILLAR INC., a Delaware
 15 Corporation and DOES 1 through 50,
 16 inclusive,

16 Defendant.

17
 18
 19 Defendant Caterpillar Inc. ("Caterpillar") answers the Complaint by Kenneth Orndorf
 20 ("plaintiff") as follows:

21 1. Pursuant to California Code of Civil Procedure § 431.30(d), Caterpillar denies
 22 each and every allegation of each and every cause of action directed against it, and denies that
 23 plaintiff has been damaged in the sums alleged, or in any sum whatsoever.

24 **FIRST AFFIRMATIVE DEFENSE**
 25 **(Failure To State A Cause Of Action)**

26 2. Caterpillar alleges that the Complaint, and each and every separate cause of action
 27 therein, fails to state facts sufficient to constitute any cause of action against Caterpillar.

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SECOND AFFIRMATIVE DEFENSE
(Comparative Negligence)

3. Caterpillar alleges, as to each and every cause of action, that at the time of the incident alleged in the Complaint, plaintiff failed to exercise reasonable or ordinary care such that the damages allegedly sustained by plaintiff, either as alleged in the Complaint or otherwise, were directly or proximately caused or contributed to by the negligence of plaintiff, and that such negligence comparatively reduces the percentage of any negligence attributable to Caterpillar, if any.

THIRD AFFIRMATIVE DEFENSE
(Third-Party Comparative Fault)

4. Caterpillar alleges, as to each and every cause of action, that the incident alleged in the Complaint and the damages allegedly sustained by plaintiff, if any, either as alleged in the Complaint or otherwise, were directly or proximately caused or contributed to by the negligence or fault of persons or entities other than Caterpillar, and that such negligence or fault of others comparatively reduces the percentage of any negligence or fault attributable to Caterpillar, if any.

FOURTH AFFIRMATIVE DEFENSE
(Non-Economic Losses are Several)

5. Caterpillar alleges that the sole and/or partial proximate cause of the damages claimed was the carelessness, recklessness, negligence, fault and/or strict liability of plaintiff and/or other persons, firms or entities, and plaintiff's recovery, if any, should be proportionately reduced according to the percentage of fault of said persons, firms and/or entities, and that Caterpillar be found legally responsible only for its determined share of legal fault, if any, by virtue of the provisions of Civil Code § 1431, *et seq.*

FIFTH AFFIRMATIVE DEFENSE
(Willful and Intentional Acts of Others)

6. Caterpillar alleges that the sole and/or partial proximate cause of the damages claimed was the willful and/or intentional acts of other persons, firms or entities.

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SIXTH AFFIRMATIVE DEFENSE
(Misuse of Product)

7. Caterpillar asserts that the alleged injuries and damages in question, if any, were the result of unreasonable, unforeseeable misuse, abuse and/or improper maintenance and/or service of the product in question.

SEVENTH AFFIRMATIVE DEFENSE
(Alteration of Product)

8. Caterpillar is informed and believes and upon such information and belief alleges that the product in question was altered after it left the control, if any, of Caterpillar, and that this alteration of the product proximately caused the alleged defect or nonconformity, if any, resulting in the injuries, losses and damages complained of, if there were any.

EIGHTH AFFIRMATIVE DEFENSE
(Indemnification)

9. Caterpillar contends that, if it is held liable for the events and occurrences as set forth in the Complaint, which Caterpillar denies, said liability will be based solely on a derivative form of liability not resulting from the negligent conduct of Caterpillar, but instead arising only from an obligation imposed by law. As such, Caterpillar would be entitled, and is entitled, to complete and totally implied indemnity.

NINTH AFFIRMATIVE DEFENSE
(Apportionment of Damages)

10. Caterpillar alleges that, if it is found liable to the plaintiff, which Caterpillar denies, and any other defendants at the time of trial in this action are also liable, then as a result the damages sustained by plaintiff, if any, liability must be apportioned based on the principles of comparative negligence, Civil Code § 1431 *et seq.*, and all other applicable law.

TENTH AFFIRMATIVE DEFENSE
(Benefits Outweigh Risk of Danger)

11. Caterpillar alleges, in light of the relevant factors, on balance, that the benefits of the design in question outweigh the risk of danger, if any, inherent in that design.

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ELEVENTH AFFIRMATIVE DEFENSE
(Off-Set of Worker's Compensation Benefits)

12. Caterpillar alleges, as to each cause of action, that at the time of the damages alleged in the Complaint, plaintiff was employed and that he was entitled to and did receive worker's compensation benefits from said employer, that his employers and co-employees were negligent in and about the matters referred to in the Complaint, and that such negligence on the part of said employer and co-employees proximately and concurrently contributed to the happening of the loss and damages complained of by plaintiff, if any; and that by reason thereof, Caterpillar is entitled to a set-off of any such benefits received or to be received by plaintiff from the employer, and further that Caterpillar is entitled to have any recovery by plaintiff from the employer reduced proportionately according to the current law regarding recovery of worker's compensation benefits.

TWELFTH AFFIRMATIVE DEFENSE
(Intervening or Superseding Cause)

13. Caterpillar alleges the incident and damages complained of by plaintiff, if there actually were any, were proximately caused, contributed to, aggravated, exacerbated and/or enhanced by the acts or omissions of persons or entities other than Caterpillar. Said acts or omissions were an intervening and/or superseding cause of such injuries and damages, thus barring plaintiff from any recovery against Caterpillar.

THIRTEENTH AFFIRMATIVE DEFENSE
(State of the Art)

14. Caterpillar alleges that at all relevant times its product conformed to generally accepted industry standards and was safe for its intended uses and, as such, the product was "state of the art" at the time of the incident alleged in plaintiff's Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

15. Caterpillar alleges that plaintiff, with full knowledge of his damages, if any, failed to mitigate such damages.

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FIFTEENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

16. Caterpillar alleges that the causes of action set forth in plaintiff's Complaint are barred by the applicable statute of limitations as stated in California Code of Civil Procedure §§ 335 and continuing through § 349.4 and, more particularly but not limited to, § 335.1.

SIXTEENTH AFFIRMATIVE DEFENSE
(Assumption of Risk)

17. Caterpillar alleges that the Complaint, and each cause of action therein, is barred on the grounds that plaintiff assumed the risk of the incident, injuries or damages alleged in the Complaint, if any.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Prior Knowledge of Defect)

18. Caterpillar alleges, as to each and every cause of action, that the subject product was used after the defect alleged in the Complaint, the existence of which Caterpillar generally and specifically denies, was known or in the exercise of reasonable or ordinary care should have been known.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Condition of Product Open and Obvious)

19. Caterpillar alleges, as to each and every cause of action that at the time of the incident alleged in the Complaint, the condition claimed to be dangerous by plaintiff was patently obvious and known, or in the exercise of reasonable or ordinary care should have been known, to plaintiff or to persons or entities other than Caterpillar.

NINETEENTH AFFIRMATIVE DEFENSE
(No Duty to Warn)

20. Caterpillar alleges that it had no duty to warn of any alleged risk associated with the use of its product because such alleged risks were unforeseeable and/or because any such alleged risks were open, obvious, and known to plaintiff.

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TWENTIETH AFFIRMATIVE DEFENSE
(Duty to Warn Fulfilled)

21. Caterpillar alleges that even if it had a duty to warn, which allegation is expressly denied, Caterpillar at all times fulfilled its alleged duty to warn of the known risks associated with the subject product.

WHEREFORE, Caterpillar prays:

1. That plaintiff take nothing by his Complaint;
2. That the Complaint be dismissed with prejudice and that judgment be awarded in favor of defendant Caterpillar Inc.;
3. That Caterpillar Inc. be awarded its costs of suit herein; and
4. That Caterpillar Inc. be awarded such other and further relief as this Court deems just and proper.

DATED: February 29, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 

Elliott D. Olson
Frederic F. Grannis
Jeffrey H. Ikejiri
Attorneys for Defendant
CATERPILLAR INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, 801 South Figueroa Street, 19th Floor, Los Angeles, California 90017-5556. On February 29, 2008, I served the within document(s):

ANSWER TO COMPLAINT BY DEFENDANT CATERPILLAR INC.

- ☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- ☒ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via .

Robert D. Ponce, Esq.
LAW OFFICES OF ROBERT D. PONCE
787 Munras Avenue, Suite 200
Monterey, CA 93940

Attorneys for Plaintiff **KENNETH
ORNDORF**

T/ (831) 649-0515
F/ (831) 649-3397

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 29, 2008, at Los Angeles, California.


Evelyn Rodriguez

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, 801 South Figueroa Street, 19th Floor, Los Angeles, California 90017-5556. On March 4, 2008, I served the within document(s):

**CATERPILLAR INC.'S NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332, 1441(B), AND 1446(B)**

- ☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- ☒ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via .

Robert D. Ponce, Esq.
**LAW OFFICES OF ROBERT D.
PONCE**
787 Munras Avenue, Suite 200
Monterey, CA 93940

Attorneys for Plaintiff **KENNETH
ORNDORF**

T/ (831) 649-0515
F/ (831) 649-3397

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 4, 2008, at Los Angeles, California.


Evelyn Rodriguez